

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Dobson Cellular Systems, Inc. Request for)	
Limited Waiver of December 31, 2005 E911)	
Deadline)	

ORDER

Adopted: November 27, 2006

Released: January 5, 2007

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Dobson Cellular Systems, Inc. (Dobson),¹ a Tier II wireless carrier.² Specifically, Dobson requests a waiver of Section 20.18(g)(1)(v) of the Commission's rules, which provides that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³ The Dobson Request is limited to nine markets that the company acquired from a bankrupt Tier III carrier, RFB Cellular, Inc. (RFB), in December 2004 (the RFB Markets).⁴ RFB operated in these markets using a Code Division Multiple Access (CDMA) air interface and a handset-based location solution. Dobson was converting to a Global System for Mobile Communications (GSM) air interface in these markets and provides Phase II service through a network-based solution.⁵ It requests a waiver of Section 20.18(g)(1)(v) of the Commission's Rules while it fully converted its subscriber base to GSM technology, at which point the 95% handset penetration requirement in Section 20.18(g)(1)(v) would be inapplicable to Dobson's system.

¹ See Dobson Cellular Systems, Inc. Request for Limited Waiver of December 31, 2005 E911 Deadline, CC Docket No. 94-102, filed Dec. 20, 2005 (Dobson Request).

² Tier II carriers are Commercial Mobile Radio Service (CMRS) providers that had over 500,000 subscribers as of the end of 2001 but were not designated as nationwide Tier I carriers by the Commission. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-23 (2002) (*Non-Nationwide Carriers Order*).

³ See 47 C.F.R. § 20.18(g)(1)(v); Dobson Request at 1.

⁴ Dobson Request at 1-3, Attach. A. Dobson states that it acquired the assets of the nine systems, excluding licenses, from RFB Cellular, Inc. on Dec. 29, 2004, and began operating the systems pursuant to a Spectrum Manager lease. *Id.* at 2 n.5. It then acquired the licenses on June 22, 2005, after receiving Commission consent for the license assignments. *Id.*

⁵ *Id.* at 1-2.

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines pursuant to our waiver authority, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.⁶ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁷

3. Based on the record before us, we find that Dobson has not satisfied the criteria required to justify its requested waiver relief from the 95% handset penetration requirement. We therefore deny Dobson's request. As we explain in more detail below, however, in light of the particular circumstances faced by Dobson, we will not pursue enforcement action as a result of Dobson's non-compliance.

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution). The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹⁰ However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.¹¹

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request

⁶ See Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18277, 18281-86 ¶¶ 13-30 (2001); Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18330, 18335-38 ¶¶ 15-26 (2001); Request for Waiver by Verizon Wireless, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18369-74 ¶¶ 16-26 (2001); Request for Waiver by AT&T Wireless Services, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18253, 18257-59 ¶¶ 13-19 (2001); Request for Waiver by Cingular Wireless LLC, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18305, 18308-11 ¶¶ 14-20 (2001); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-10 ¶ 1 (2005) (*Tier III Carriers Order*). Tier III carriers may be entitled to relief pursuant to the Commission's waiver standard or, alternatively, the ENHANCE 911 Act, which directs the Commission to grant waivers for Tier III carriers of the 95% penetration benchmark if "strict enforcement . . . would result in consumers having decreased access to emergency services." National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

⁷ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

⁸ See 47 C.F.R. § 20.18(e).

⁹ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

¹⁰ See 47 C.F.R. § 20.18(f), (g)(2).

¹¹ See 47 C.F.R. § 20.18(j)(1).

for Phase II service.¹² After ensuring that 100% of all new digital handsets activated are location-capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹³

B. Waiver Standards

6. On September 8, 2000, the Commission released the *Fourth MO&O*, in which it recognized that “special circumstances” may warrant a waiver of the E911 Phase II requirements.¹⁴ The Commission’s general waiver standards require a waiver proponent to show that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁵ With respect to waiver of the E911 Phase II requirements, the Commission required that waiver requests be “specific, focused and limited in scope, and with a clear path to full compliance,”¹⁶ and that requesting carriers “should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”¹⁷ The requirement that carriers present a “clear path to full compliance,” dictates that we grant relief only when sufficiently justified, and limit any extension of the handset penetration deadline to the shortest practicable time.¹⁸ We otherwise continue to expect carriers to achieve full compliance with the E911 Phase II requirements as soon as possible.¹⁹

7. In its 2003 *Order to Stay*,²⁰ the Commission put carriers on notice that any claim based on factors beyond a carrier’s control would be credited only if the carrier submitted specific evidence substantiating the claim, *e.g.*, documentation that, despite a carrier’s good faith efforts to conclude agreements with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks, it was unable to do so.²¹ Carriers claiming that financial hardship prevented compliance with the December 31, 2005 95% penetration deadline were advised that a waiver was unwarranted unless the carrier provided sufficient and specific factual information,²² and that a carrier seeking a waiver based on extraordinary financial hardship could strengthen its justification by submitting documentation

¹² See 47 C.F.R. § 20.18(g)(1).

¹³ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁴ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17457 ¶ 43 (2000) (*Fourth MO&O*).

¹⁵ See 47 C.F.R. § 1.925(b)(3). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

¹⁶ *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44.

¹⁷ *Id.*

¹⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

¹⁹ See *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 45.

²⁰ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987 (2003).

²¹ *Id.* at 20996-20997 ¶ 25.

²² See *id.* at 20997 ¶ 29. The Commission noted that it generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.²³ Finally, the Commission stated that it:

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.²⁴

C. The Dobson Request

8. Dobson acquired the RFB Markets in December 2004 from RFB, a bankrupt, Tier III CDMA carrier.²⁵ Dobson states that "to avoid undue disruption of the subscriber base it inherited," it, for a period of time, continued operating the CDMA network and providing Phase II service to CDMA subscribers in the RFB Markets using the legacy system's handset-based solution.²⁶ In its request, Dobson represents that it will migrate the legacy subscribers in these nine markets to Dobson's GSM network by December 2006.²⁷ Dobson argues it would be "counterproductive" to market location-capable CDMA handsets to these subscribers, since Dobson is "trying to migrate these customers off the CDMA network."²⁸ Therefore, Dobson states, it is "not attempting to persuade its subscribers to upgrade their non-ALI-capable handsets to those with ALI capability," but rather "must persuade its customers to migrate to a different air interface that will utilize a network-based solution . . ."²⁹ Dobson represents that it has ensured that all CDMA handsets it activated after acquiring the RFB Markets were location-capable.³⁰

9. Dobson completed a GSM overlay in the RFB Markets in July 2005.³¹ It initiated Phase II service utilizing a network-based solution and is currently providing Phase II location information via its network-based solution to all PSAPs in the RFB Markets that have requested Phase II service.³² After completing the GSM overlay, Dobson "began actively to solicit legacy subscribers to switch to Dobson's GSM network," and ceased sale and activation of CDMA handsets.³³ To induce legacy subscribers to migrate to GSM handsets, Dobson "provides a phone either completely free of charge or for the incremental cost of only \$0.99," is "introducing new, lower rate GSM access plans in order to attract inherited subscribers who are clinging to legacy rate plans," "offering . . . subsidized handset pricing that

²³ *See id.*

²⁴ *Id.* at 20997 ¶ 28.

²⁵ Dobson Request at 2-3, Attach. A.

²⁶ *Id.* at 2. *See also* Notice of Oral *Ex Parte* Presentation, CC Docket No. 94-102, at 1 (July 3, 2006) (July 2006 *Ex Parte*).

²⁷ *See* Dobson Request at 1-2, 7.

²⁸ *See id.* at 5.

²⁹ *Id.* at 4.

³⁰ *Id.* at 3.

³¹ *Id.*

³² *Id.* *See also* Dobson Cellular Systems, Inc. E911 Quarterly Report, CC Docket No. 94-102, filed Feb. 1, 2006, Appendix A, at 1-2.

³³ Dobson Request at 3. Dobson also "has not renewed or extended any CDMA or analog contracts in the last four months and will not do so in the future." *Id.* at 7.

it typically only extends to brand new customers (or those with fewer than 6 months remaining on their existing contracts) to minimize a subscriber's entry costs," and "allows these subscribers to take advantage of existing promotions (e.g., one month of free data)."³⁴ Dobson states that, as a result of these efforts, between July 2005 and December 2005, the number of former RFB subscribers still using CDMA or analog handsets declined to less than 12,500, representing almost 50% of the total number of subscribers inherited from RFB.³⁵ Of those former RFB subscribers that continue to use non-GSM handsets, Dobson estimates that, as of the date of the Dobson Request, approximately 4,000 of the 12,500 possess non-ALI-capable handsets.³⁶

10. Dobson asserts that its request "provides a clear path for converting inherited CDMA and analog subscribers off the legacy CDMA network and billing platform onto Dobson's more robust GSM network as soon as possible."³⁷ It will "initiate a targeted letter writing campaign informing former RFB subscribers of the ability to receive a free or \$0.99 phone along with a rate plan comparable or superior to the customer's current plan" and "a direct marketing campaign focused on these former RFB subscribers," and will offer "comparable rate plans" for subscribers that had signed up for RFB's "low-minute rate plans."³⁸ Dobson "envision[s] completing all CDMA migrations not later than December 31, 2006, after which Dobson will affirmatively require subscribers to migrate from the CDMA network or face discontinuance of their service."³⁹

11. In a May 2006 *ex parte* filing, Dobson reports that, as of April 30, 2006, it had "migrated approximately 18,000 of the 25,000 legacy customers off of the CDMA network."⁴⁰ Dobson adds that the RFB Markets include vacation areas, and it "remains hopeful that many of these customers will choose to migrate during the peak vacation/summer months."⁴¹ Further, Dobson states it seeks relief through 2006 "to allow these legacy subscribers a reasonable opportunity to consider their alternatives without the immediate risk of losing service," and "is now offering to double legacy CDMA customers' minutes for life with select GSM plans and a free GSM phone."⁴² Dobson subsequently reports that it "has deactivated the CDMA network as of June 30, 2006, and therefore modifies its request for waiver to seek relief through June 30, 2006 rather than December 31, 2006."⁴³

III. DISCUSSION

12. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and ensure that Phase II would be fully implemented as quickly as possible.⁴⁴ Absent Phase II location data, emergency

³⁴ *Id.*

³⁵ *See id.* at 4.

³⁶ *See id.* Further, approximately 2,900 of these 4,000 legacy subscribers utilize analog handsets. *Id.*

³⁷ *Id.* at 6.

³⁸ *Id.* at 7.

³⁹ *Id.*

⁴⁰ Notice of Oral *Ex Parte* Presentation, CC Docket No. 94-102, at 1 (May 4, 2006) (May 2006 *Ex Parte*).

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ July 2006 *Ex Parte* at 1.

⁴⁴ *See Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information.⁴⁵ At the same time and as noted earlier, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.⁴⁶ Consistent with these considerations, and for the reasons set forth below, we find that the waiver request made by Dobson does not meet the Commission's standard for relief from the E911 requirements. In light of the particular circumstances faced by Dobson, however, we will not pursue enforcement action.

13. Under the circumstances of this case, we do not believe that Dobson has satisfied the Commission's E911 waiver standards. Dobson did not ensure that 95% of its subscribers who continued to be served by the handset-based Phase II solution had location-capable handsets by December 31, 2005. Notwithstanding Dobson's efforts to convert the former RFB subscribers to its GSM platform, and its deactivation of the CDMA network as of June 30, 2006, Phase II service was not available for certain subscribers until June 30, 2006. Specifically, until June 30, 2006, Phase II service had been unavailable to any subscribers that had not converted to GSM handsets (and thus could not receive Phase II service using Dobson's network-based solution) and continued to have non-location-capable phones (and thus could not receive Phase II service using the legacy handset-based solution). The fact that Dobson acquired a system that Dobson desired to convert to its selected Phase II technology does not automatically excuse compliance with E911 requirements. Dobson was responsible for its choice in acquiring and converting this system to GSM and a network-based E911 solution and, thus, the delays caused by the transition.⁴⁷ Dobson must show, consistent with the Commission's waiver criteria, that it faced "special circumstances" warranting waiver relief, and that it took the steps necessary to achieve Phase II capabilities within the shortest practicable time.

14. While Dobson made some efforts to convince subscribers to convert to GSM handsets, and thereby reduce the subset of customers without location-capable phones, these efforts met with limited success. As of the date of the Dobson Request, Dobson estimated that it was left with approximately 4,000 subscribers with non-location-capable handsets and no Phase II capabilities. Thus, Dobson knew, or should have known, in advance of the handset penetration deadline, that its efforts were proving inadequate for achieving timely compliance. For example, to the extent Dobson offered free or reduced-price GSM phones as an inducement to its subscribers, Dobson could have eliminated any requirement that such customers also accept as a condition of receipt of GSM phones a renewed or extended service contract, which likely would have improved the effectiveness of its efforts.⁴⁸ We also observe that Dobson could have taken additional efforts targeted to those legacy CDMA subscribers

⁴⁵ Phase I E911 service provides a PSAP with data elements containing the telephone number of the originator of the 911 call and the location of the cell site or base station receiving the 911 call. See 47 C.F.R. § 20.18(d). Thus, the actual location of the caller can be miles distant from the location information provided to the PSAP, with consequent delay in providing the caller with emergency services, assuming that the caller can actually be located. Phase II service, by comparison, has a required location accuracy of one-hundred meters for 67% of calls and 300 meters for 90% of calls (network based location solution) or 50 meters for 67% of calls and 150 meters for 95% of calls (handset based location solution). See 47 C.F.R. §§ 20.18(h)(1),(2).

⁴⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

⁴⁷ We do not address here circumstances in which a carrier changes the Phase II location technology of an acquired network following the December 31, 2005 95% penetration deadline.

⁴⁸ Beginning in May 2006, Dobson offered all legacy customers free GSM phones with no contract requirement, as well as to double minutes for life on certain GSM plans. Written *Ex Parte* Presentation, CC Docket No. 94-102, at 3 (Oct. 5, 2006) (October 2006 *Ex Parte*)

without location-capable phones.⁴⁹ Had it done so, Dobson could have accelerated the conversion of such customers to GSM, thereby providing them with Phase II capability, while reducing the overall number of subscribers who have CDMA phones, including those subscribers whose CDMA phones lack location capability.

15. Dobson offers as a reason for its non-compliance the reluctance of some of its customers to convert to GSM phones.⁵⁰ If Dobson found its subscribers resistant to adopting GSM handsets, however, it should have taken additional steps to ensure that it converted at least its legacy subscribers without location-capable phones to GSM handsets as quickly as possible and not later than the December 31, 2005 deadline.⁵¹ Dobson does not otherwise demonstrate that “special circumstances” prevented its timely compliance. At the same time, Dobson’s failure to timely comply with the 95% requirement, combined with the fact that certain of its subscribers continued to have no access to Phase II service, lead us to conclude that Dobson has not achieved compliance with the E911 requirements as quickly as possible.

16. We acknowledge that throughout the transition of the legacy CDMA subscribers to its GSM network, Dobson provided Phase II service utilizing its GSM, network-based solution to all PSAPs in the RFB Markets that had requested Phase II service. Thus, the network-based Phase II solution had been available to legacy RFB subscribers converting to GSM technology. Further, Dobson maintained a handset-based solution for the legacy CDMA platform during its transition to GSM. Dobson could have avoided the need to file a waiver request by shutting down the legacy CDMA network before the compliance deadline, but chose instead to provide continuous service to former RFB subscribers.⁵² Indeed, under the facts of this case, Dobson acquired the assets of a bankrupt carrier that otherwise may have suspended operations. We also note that Dobson’s request applies only to the RFB Markets and, as Dobson subsequently reports, requires a six-month extension rather than until December 21, 2006, as originally sought. We afford some weight to the fact that, in the absence of the Dobson acquisition, RFB may have been entitled to some relief from the December 31, 2005 handset penetration requirement based on the provisions of the ENHANCE 911 Act, by virtue of its status as a handset-based, qualified Tier III carrier.⁵³ Furthermore, had a Tier I or Tier II CDMA, handset-based carrier acquired RFB, as opposed to a GSM, network-based carrier like Dobson, the 25,000 RFB subscribers likely would have had little or no impact on the location-capable handset penetration level of the much larger subscriber base of a Tier I or Tier II carrier.⁵⁴ In other words, Dobson probably would not have had to file a waiver request if it were not a GSM-based carrier with 1.6 million customers. Although these factors do not overcome our determination that Dobson has failed to meet the criteria for a waiver, they do suggest that it is not necessary to pursue enforcement action.

⁴⁹ For example, but not until late June 2006, Dobson “hot-lined” calls made on legacy CDMA handsets so that all calls attempted using legacy phones were first directed to a customer service agent. The customer service agent then informed the customer that the CDMA network would be turned down June 30th and highlighted available GSM upgrade offers. *Id.*

⁵⁰ See Dobson Request at 4-5.

⁵¹ Cf. Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Verizon Wireless, *Order*, CC Docket No. 94-102, 16 FCC Rcd 18364, 18371 ¶ 20 (2001) (*Verizon Order*) (noting “had Verizon more timely selected a handset approach, it might have been able to meet a more aggressive handset deployment schedule than that it ultimately proposed.”).

⁵² See October 2006 *Ex Parte* at 1.

⁵³ See *supra* note 6; see also October 2006 *Ex Parte* at 1.

⁵⁴ See October 2006 *Ex Parte* at 1-2.

IV. CONCLUSION

17. Under the circumstances of this case, we find that Dobson has failed to satisfy the Commission's waiver standards. For these reasons, we deny Dobson's request to waive the handset penetration deadline. In light of the particular circumstances faced by Dobson, however, we will not pursue enforcement action with respect to Dobson's failure to timely comply with Section 20.18(g)(1)(v).

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED pursuant to Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing Order IS ADOPTED.

19. IT IS FURTHER ORDERED, that the Dobson Cellular Systems, Inc. Request for Limited Waiver of December 31, 2005 E911 Deadline IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary